

DRAFT



STATE BOARD OF EQUALIZATION STAFF LEGISLATIVE ENROLLED BILL ANALYSIS

Date Amended	Enrolled	Bill No:	AB 205
Tax:	Business Taxes Property Taxes	Author:	Goldberg
Board Position:		Related Bills:	

BILL SUMMARY

This bill would enact the California Domestic Partners and Responsibilities Act of 2003 to provide registered domestic partners with (1) the same rights, protections, and benefits, and (2) the same responsibilities, obligations, and duties under law, whether they derive from statutes, administrative regulations, court rules, government policies, common law, or any other provisions or sources of law, except those conferred by the California Constitution or a statute that was adopted by initiative, as are granted to and imposed upon spouses.

ANALYSIS

Current Law

Sales & Use Tax

Under the existing Sales and Use Tax Law, there are two provisions that apply to spouses that this bill could specifically impact, as follows:

Sales of vehicles, vessels and aircraft to family members. Section 6285 of the Revenue and Taxation Code provides that, among other things, the sale of a vehicle, vessel or aircraft from one spouse to the other spouse is exempt from sales and use tax, unless the selling spouse is engaged in the business of selling that type of property.

Relief of liability for an innocent spouse. Section 6456 of the Revenue and Taxation Code provides that under specified conditions, if a spouse establishes that he or she did not know of, and had no reason to know of, an understatement of a sales or use tax liability attributable to his or her spouse, and taking into account all facts and circumstances, it would be inequitable to hold that spouse liable for that tax liability, that spouse may be relieved of the liability attributable to the other spouse, without regard to community property laws.

Property Tax

With respect to property taxes, there are various benefits granted to spouses and children of spouses that are provided for in the Constitution (Articles XIII and XIII A). Because these benefits are expressly stated in the constitution, this bill would not apply to these provisions of property tax law.

This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the Board's formal position.

Public-Use Forms

Subdivision (a) of Section 14771 of the Government Code gives the State Forms Management Program, which is in the Department of General Services, an oversight role with respect to public-use forms and form design. However, due to the need for tax forms to be available to the public on a timely basis, all tax forms, including returns, schedules, notices, and instructions prepared by the Board of Equalization and the Franchise Tax Board, are exempt from this oversight pursuant to subdivision (b) of Section 14771.

Proposed Law

- This bill would add Section 297.5 of the Family Code to provide that:
 1. **Registered domestic partners** have the same rights, protections, and benefits, and are subject to the same responsibilities, obligations, and duties under law, whether they derive from statutes, administrative regulations, court rules, government policies, common law, or any other provisions or sources of law, as are granted to and imposed upon **spouses**.
 2. **Former registered domestic partners** shall have the same rights, protections, and benefits, and shall be subject to the same responsibilities, obligations, and duties under law, whether they derive from statutes, administrative regulations, court rules, government policies, common law, or any other provisions or sources of law, as are granted to and imposed upon **former spouses**.
 3. A **surviving registered domestic partner**, following the death of the other partner, shall have the same rights, protections, and benefits, and shall be subject to the same responsibilities, obligations, and duties under law, whether they derive from statutes, administrative regulations, court rules, government policies, common law, or any other provisions or sources of law, as are granted to and imposed upon a **widow or a widower**.
 4. The rights and obligations of **registered domestic partners with respect to a child of either of them** shall be the **same as those of spouses**. The rights and obligations of former or surviving registered domestic partners with respect to a child of either of them shall be the same as those of former or surviving spouses.
 5. Subdivision (h) of Section 297.5 provides that this act **does not preclude any state or local agency from exercising its regulatory authority to implement statutes** providing rights to, or imposing responsibilities upon, domestic partners.
 6. Subdivision (i) of Section 297.5 provides that this section **does not amend or modify any provision of the California Constitution or any provision of any statute that was adopted by initiative**.

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- This bill would also add paragraph (14) to subdivision (a) of Section 14771 of the Government Code, to require the director of General Services, through the forms management center, to provide notice to state agencies, forms management representatives, and departmental forms coordinators, that in the usual course of reviewing and revising **all public-use forms that refer to or use the terms spouse, husband, wife, father, mother, marriage, or marital status, that appropriate references to domestic partner, parent, or domestic partnership are to be included.**

These provisions would become operative on January 1, 2005.

COMMENTS

1. **Sponsor and Purpose.** This bill is sponsored by the author to "significantly expand the rights and responsibilities currently provided to registered domestic partners and their families to include nearly all the legal rights, benefits, responsibilities, duties, and obligations under state law currently available only to married couples. Those legal protections and responsibilities guide couples through nearly every complex legal situation faced by families such as death, divorce, custody disputes, illness, childbirth, and adoption." According to the author, "There is simply no good reason to deny those additional rights and duties to registered, committed domestic partners and their children. Granting these rights and responsibilities will further the State's interest in promoting stable and lasting family relationships, and will protect family members from the economic and social consequences of abandonment, separation, the death of loved ones, and other life crises. It will also protect couples, the children they are raising, third parties, and the State from numerous harms and costs."
2. **With respect to sales and use taxes, there are two statutes (not adopted by initiatives) that provide a benefit to spouses.** These include the exemption for vehicles, vessels and aircraft when purchased by a spouse, and provisions that grant relief of liability for the tax attributable to one spouse when the other spouse had no knowledge of, and had no reason to have knowledge of, that understatement of tax. This bill would extend these benefits to domestic partners. Follow-up legislation is suggested to amend the Revenue and Taxation Code to directly provide appropriate references to registered domestic partners to aid and inform tax administrators and the public of the applicability of these provisions to registered domestic partners.
3. **Updating Board public-use forms and other documents.** Although the Board's tax forms are specifically exempted from the provisions of Government Code Section 14771(a), the Board could review and consider appropriate references to domestic partners when updating any tax forms or other documents to which AB 205 would apply.
4. **Proposed Family Code Section 297.5 does not amend or modify any provision of the California Constitution or any provision of any statute that was adopted by initiative.**

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5. **This bill would not preclude a state agency from exercising its authority to adopt regulations to implement statutes that provide rights to, or impose responsibilities upon, domestic partners.**

COST ESTIMATE

Enactment of this bill would result in minor, absorbable costs.

REVENUE ESTIMATE

With respect to the programs administered by the Board, the revenue impact of this bill would be minimal.

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